

STEVE MARSHALL
Attorney General of Alabama

Edmund G. LaCour Jr. (AL Bar No. 9182-U81L)
Solicitor General

Thomas A. Wilson (AL Bar No. 1494-D25C)
Deputy Solicitor General

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Ave.
Montgomery, AL 36130
Telephone: (334) 242-7300
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Thomas.Wilson@AlabamaAG.gov

*Counsel for Proposed Defendant-Intervenor
State of Alabama*

*[additional counsel listed on
signature page]*

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

KELSEY CASCADIA ROSE JULIANA, et al.,
Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. 6:15-cv-01517-AA

**PROPOSED DEFENDANT-
INTERVENORS' BRIEF IN
OPPOSITION TO PLAINTIFFS'
MOTION TO EXTEND TIME TO
RESPOND TO PROPOSED
DEFENDANT-INTERVENORS'
MOTION FOR LIMITED
INTERVENTION**

Proposed Defendant-Intervenors' Brief in Opposition to Plaintiffs' Motion
to Extend Time to Respond to Proposed Defendant-Intervenors'
Motion for Limited Intervention

**PROPOSED DEFENDANT-INTERVENORS’ BRIEF IN OPPOSITION TO
PLAINTIFFS’ MOTION TO EXTEND TIME TO RESPOND TO PROPOSED
DEFENDANT-INTERVENORS’ MOTION FOR LIMITED INTERVENTION**

Plaintiffs seek nothing “less than a fundamental transformation of this country’s energy system, if not that of the industrialized world.” *Juliana v. United States*, 47 F.3d 1159, 1171 (9th Cir. 2020). The Proposed Defendant-Intervenor States seek something far more modest—the ability to have their views considered in upcoming proceedings regarding settlement and whether this Court has jurisdiction over Plaintiffs’ claims.¹ With so much potentially at stake due to the “striking” “breadth” of Plaintiffs’ claims, *United States v. U.S. Dist. Court for Dist. of Or.*, 139 S. Ct. 1 (2018), Plaintiffs should provide a prompt response to the States’ motion so this Court can make its ruling. Plaintiffs’ motion for an extension of time (Doc. 489) should be denied.

On June 8, 2021, the States moved for limited intervention in this case to ensure their interests are not undermined through settlement of a dispute that this Court lacks jurisdiction to adjudicate. Doc. 475. The States requested limited intervention to argue that Plaintiffs lack Article III standing to bring their claims and that therefore any settlement of those claims in this Article III Court is improper. At present, the States have no guarantee that any party to this litigation shares their view or interests. The settlement conference is set for June 23, 2021.

The States sought expedited consideration of their motion that would have given the parties 7 days to respond, with 2 days for a reply, and 5 days for the Court to rule on the motion before the June 23 conference. Doc. 475 at 2. Defendants did not object to that schedule, but Plaintiffs

¹ The States again note their special, limited appearance solely for purposes of opposing Plaintiffs’ motion for leave to amend and file a second amended complaint (Doc. 462); participating in settlement negotiations; and, if necessary, objecting to any proposed settlement. Neither this brief nor any preceding or subsequent appearance, pleading, document, writing, objection, or conduct should be construed to constitute a waiver of any rights, protections, or immunities, including, without limitation, sovereign immunity. The States expressly reserve their sovereign immunity.

did. *Id.* By its June 10, 2021 scheduling order, the Court appears to have denied that request. Doc. 485. If the Court is not inclined to require expedited briefing so the States may be better able to participate in upcoming proceedings over settlement and the Court’s jurisdiction, then at a minimum, the States request that the Court maintain the standard briefing schedule so that the States face no further delay to their ability to participate in upcoming proceedings regarding settlement and this Court’s jurisdiction. That delay would risk prejudice to the States, *see Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010), for as they explained in their motion for limited intervention, the States have reason to fear that Defendants may enter a collusive settlement with Plaintiffs to the detriment of the substantive and procedural rights of the States and their citizens.

Plaintiffs assert that the States’ motion for limited intervention “raises new, unanticipated circumstances in the case that require careful consideration,” and suggest “Plaintiffs’ counsel will need significant time to confer with their clients to develop their position with respect to [the States’] role in this case going forward, if any.” Doc. 489 at 2. It is hard to see why “significant time” is needed though, when Plaintiffs have already decided to oppose *any* role for the States in this case. The only question remaining is whether the States have satisfied the requirements of Federal Rule of Civil Procedure 24. And it is unclear why significant time for client conferral is needed to answer *that* question.

Regarding prejudice, if the Court permits briefing and a ruling on the States’ motion to extend past the settlement conference, the Court should hold Plaintiffs to their important assurance that “no decisions implicating [the States’] alleged interests will be made before briefing is complete on their motion.” Doc. 489 at 3. Indeed, no such decisions should be made before the States’ motion has been decided and the States have had their chance to be heard regarding any possible settlement and this Court’s jurisdiction.

Finally, even if the Court grants Plaintiffs additional time to file their response, Defendants' response should still be due no later than June 22, with the States' reply to that response due no later than two weeks thereafter. To begin, Plaintiffs ask only for an extension of their own deadline, not Defendants'. And Defendants previously indicated no opposition to filing a response by as soon as June 15. *See* Doc. 475 at 2. The sooner Defendants file their response, the sooner the States can address Defendants' specific arguments. And once Defendants brief those arguments, Plaintiffs can focus their efforts on additional arguments they might want to raise, saving Plaintiffs time and ensuring that once Plaintiffs file their response on July 6, the States would need to reply to only Plaintiffs' additional arguments. This approach therefore would be a win-win-win by (1) saving Plaintiffs' time, (2) reducing duplicative briefing from Plaintiffs and Defendants, and (3) allowing briefing to conclude more expeditiously in July because, by then, the States will have to reply to only Plaintiffs' new arguments.

CONCLUSION

The Court should deny Plaintiffs' Motion to Extend Time to Respond to Proposed Defendant-Intervenors' Motion for Limited Intervention. Doc. 489.

Respectfully submitted,

STEVE MARSHALL
Attorney General of Alabama

/s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr. (AL Bar No. 9182-U81L)
Solicitor General

Thomas A. Wilson (AL Bar No. 1494-D25C)
Deputy Solicitor General

TREG TAYLOR
Attorney General of Alaska

/s/ Nathaniel Haynes
Nathaniel Haynes (AK Bar No. 1906061)
Assistant Attorney General

STATE OF ALASKA
ALASKA DEPARTMENT OF LAW
ENVIRONMENTAL SECTION

Proposed Defendant-Intervenors' Brief in Opposition to Plaintiffs' Motion
to Extend Time to Respond to Proposed Defendant-Intervenors'
Motion for Limited Intervention

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL
501 Washington Ave.
Montgomery, AL 36130
Telephone: (334) 353-2196
Fax: (334) 353-8400
Edmund.LaCour@AlabamaAG.gov
Thomas.Wilson@AlabamaAG.gov

Counsel for Proposed Defendant-Intervenor State of Alabama

LESLIE RUTLEDGE
Attorney General of Arkansas

/s/ Nicholas J. Bronni
Nicholas J. Bronni (AR Bar No. 2016097)
Solicitor General

STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201
Telephone: (501) 682-6302
Nicholas.Brunni@ArkansasAG.gov

Counsel for Proposed Defendant-Intervenor State of Arkansas

TODD ROKITA
Attorney General of Indiana

/s/ Thomas M. Fisher
Thomas M. Fisher (IN Bar No. 17949-49)
Solicitor General

STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL
Indiana Government Center South, Fifth Floor
302 W. Washington Street
Indianapolis, IN 46204-2770
Telephone: (317) 232-6255
Facsimile: (317) 232-7979
Tom.Fisher@atg.in.gov

Counsel for Proposed Defendant-Intervenor State of Indiana

Proposed Defendant-Intervenors' Brief in Opposition to Plaintiffs' Motion
to Extend Time to Respond to Proposed Defendant-Intervenors'
Motion for Limited Intervention

1031 W. 4th Ave, Suite 200
Anchorage, AK 99501
Telephone: (907) 269-5274
Nathaniel.Haynes@Alaska.gov

Counsel for Proposed Defendant-Intervenor State of Alaska

CHRISTOPHER M. CARR
Attorney General of Georgia

/s/ Andrew Pinson
Andrew Pinson (GA Bar No. 584719)
Solicitor General

STATE OF GEORGIA
GEORGIA DEPARTMENT OF LAW
40 Capitol Square SW
Atlanta, GA, 30334
Telephone: (404) 458-3409
apinson@law.ga.gov

Counsel for Proposed Defendant-Intervenor State of Georgia

JEFF LANDRY
Attorney General of Louisiana

/s/ Elizabeth B. Murrill
Elizabeth B. Murrill (LA Bar No. 20685)
Solicitor General

J. Scott St. John (LA Bar No. 36682)
Deputy Solicitor General

STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third Street
Baton Rouge, LA 70804
Telephone: (225) 326-6766
emurrill@ag.louisiana.gov
stjohnj@ag.louisiana.gov

Counsel for Proposed Defendant-Intervenor State of Louisiana

LYNN FITCH
Attorney General of Mississippi

ERIC SCHMITT
Attorney General of Missouri

/s/ Justin L. Matheny
Justin L. Matheny (MS Bar No. 100754)
Deputy Solicitor General

/s/ Jeff P. Johnson
Jeff P. Johnson (MO Bar No. 73249)
Deputy Solicitor General

STATE OF MISSISSIPPI
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 220
Jackson, MS 39205
Telephone: (601) 359-3680
Justin.Matheny@ago.ms.gov

STATE OF MISSOURI
OFFICE OF THE ATTORNEY GENERAL
Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: (314) 340-7366
Fax: (573) 751-0774
Jeff.Johnson@ago.mo.gov

Counsel for Proposed Defendant-Intervenor State of Mississippi

Counsel for Proposed Defendant-Intervenor State of Missouri

AUSTIN KNUDSEN
Attorney General of Montana

DOUGLAS J. PETERSON
Attorney General of Nebraska

/s/ David Dewhirst
David Dewhirst (MT Bar No. 65934132)
Solicitor General

/s/ James A. Campbell
James A. Campbell (NE Bar No. 26934)
Solicitor General

STATE OF MONTANA
OFFICE OF THE ATTORNEY GENERAL
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-4145
David.Dewhirst@mt.gov

STATE OF NEBRASKA
OFFICE OF THE NEBRASKA ATTORNEY
GENERAL
2115 State Capitol
Lincoln, NE 68509
Telephone: (402) 471-2682
Jim.Campbell@Nebraska.gov

Counsel for Proposed Defendant-Intervenor State of Montana

Counsel for Proposed Defendant-Intervenor State of Nebraska

WAYNE STENEHJEM
Attorney General of North Dakota

DAVE YOST
Attorney General of Ohio

/s/ Matthew A. Sagsveen

Matthew A. Sagsveen (ND Bar No. 05613)
Solicitor General

STATE OF NORTH DAKOTA
OFFICE OF THE ATTORNEY GENERAL
500 North 9th Street
Bismarck, ND 58501-4509
Telephone: (701) 328-3640
Fax: (701) 328-4300
masagsve@nd.gov

*Counsel for Proposed Defendant-Intervenor State
of North Dakota*

DAWN CASH
Acting Attorney General of Oklahoma

/s/ Mithun Mansinghani

Mithun Mansinghani (OK Bar No. 32453)
Solicitor General

STATE OF OKLAHOMA
OFFICE OF THE ATTORNEY GENERAL
313 NE 21st St.
Oklahoma City, OK 73105
Telephone: (405) 521-3921
Fax: (405) 521-4518
Mithun.Mansinghani@oag.ok.gov

*Counsel for Proposed Defendant-Intervenor State
of Oklahoma*

KEN PAXTON
Attorney General of Texas

Brent Webster (TX Bar No. 24053545)
First Assistant Attorney General

Judd E. Stone II (TX Bar No. 24076720)
Solicitor General

/s/ Natalie D. Thompson

Natalie D. Thompson (TX Bar No. 24088529)

/s/ Benjamin M. Flowers

Benjamin M. Flowers (OH Bar No.
0095284)
Solicitor General

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
30 East Broad Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 466-8980
Fax: (614) 466-5087
Benjamin.Flowers@OhioAGO.gov

*Counsel for Proposed Defendant-Interve-
nor State of Ohio*

ALAN WILSON
Attorney General of South Carolina

/s/ James Emory Smith, Jr.

James Emory Smith, Jr. (SC Bar No. 5262)
Deputy Solicitor General

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3680
Fax: (803) 734-3677
esmith@scag.gov

*Counsel for Proposed Defendant-Interve-
nor State of South Carolina*

SEAN REYES
Attorney General of Utah

/s/ Melissa A. Holyoak

Melissa A. Holyoak (UT Bar No. 9832)
Solicitor General

STATE OF UTAH
OFFICE OF THE UTAH ATTORNEY GENERAL
160 E. 300 S., 6th Floor
Salt Lake City, UT 84114

Assistant Solicitor General

STATE OF TEXAS
OFFICE OF THE TEXAS ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
Telephone: (512) 936-1700
Fax: (512) 474-2697
Natalie.Thompson@oag.texas.gov

Telephone: (801) 538-9600
MelissaHolyoak@agutah.gov

*Counsel for Proposed Defendant-Interven-
nor State of Utah*

*Counsel for Proposed Defendant-Intervenor State
of Texas*

PATRICK MORRISEY
Attorney General of West Virginia

/s/ Lindsay See
Lindsay See (WV Bar No. 13360)
Solicitor General

STATE OF WEST VIRGINIA
OFFICE OF THE WEST VIRGINIA ATTORNEY
GENERAL
State Capitol, Bldg 1, Room E-26
Charleston, WV 25305
Telephone: (681) 313-4550
Lindsay.S.See@wvago.gov

*Counsel for Proposed Defendant-Intervenor State
of West Virginia*

CERTIFICATE OF SERVICE

I hereby certify that on June 11, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Oregon by using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
Counsel for State of Alabama